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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/441,199	11/16/1999	TAKANARI YAMAGUCHI	2185-0380P	3990
7590	07/27/2005			
BIRCH STEWART KOLASCH & BIRCH LLP P O BOX 747 FALLS CHURCH, VA 220400747			EXAMINER MULLIS, JEFFREY C	
			ART UNIT	PAPER NUMBER
			1711	
DATE MAILED: 07/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/441,199	<b>Applicant(s)</b> YAMAGUCHI ET AL.	
	<b>Examiner</b> Jeffrey C. Mullis	<b>Art Unit</b> 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 5 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) The invention was described in (1) an application for patent, published under Section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Ota et al. (Translation of Japanese Patent 06-57008).

See the Office action of 9-26-03 at the paragraph bridging pages 2 and 3 et seq.

Claims 2 and 10-12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the translation of Ota et al., cited above.

See the Office action of 9-26-03 at the paragraph bridging pages 3 and 4 et seq.

Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ota et al., cited above in view of Fenton (U.S. 4,584,244).

See the Office action of 9-26-03 at page 5 line 1 et seq.

Claims 1-3, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Itoh et al. (U.S. 6,610,786).

Itoh et al. disclose a process in which a mixture of polyolefin and rubber is melt kneaded in a first extruder into a second extruder. Note Example 1 at column 16 line 48 - column 17 line 8. Note that the second extruder contains

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crystalline propylene at column 17 lines 9-19. Note that the kneaded material from the first extruder is supplied to the second extruder is supplied in the molten state at column 11 lines 2-4. The rubber component may have a melt flow rate of 5 grams for 10 minutes under a load of 2.16 kg at 230°C at column 5 lines 6-10. As the rubber of Itoh et al. is molten at temperatures even well below 230°C, the limitations of claims 2 and 10-11 are met.

Claims 5 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants' arguments filed 5-2-05-2-05 have been fully considered but they are not deemed to be persuasive.

A "cycle" is a series of steps. The repetition of such a series of steps would not be said to be a cycle by those skilled in the art but no repetition of a series of steps is conducted based on the examiner's interpretation of Ota. There is nothing in Ota re melting in the side feeder and then remelting in the extruder. Ota merely discloses that melting kneading takes place in the extruder. Patentees at the bottom of page 14 of the translation in paragraph 22 refers to the length of the supply port barrel for feeding components A and B as being important for insuring that the components are melted. If no melting takes place in the supply port barrels (including the side feeder) it is not clear why the length would be important. With re to the temperature of the side feeder, those skilled in the art can determine the temperatures necessary for melting.. With re to Fenton, it is not the position of the examiner that Fenton discloses the deficiencies of Ota alleged by applicants.

With re to Itoh, crosslinking materials are commonly present as a part of rubber and the term " rubber" therefore would resonbly appear to embrace crosslinked rubber and therefore it is not clear that even "consisting of" would distinguish over Itoh. In any case, the term "consisting essentially of" only excludes those materials which materially affect the novel and basic characteristics of a composition and it is applicants' burden to prove that such characteristics are changed by the presence of additional materials recited in a prior art product. Note In re Janakirama-Rao, 317 F. 2d 951, 137 USPQ 893 (CCPA 1963) and In re De Lajarte, 337 F. 2d 870, 143 USPQ 256 (CCPA 1964) in this regard. It is not clear if applicants are requesting an interview at the bottom of page 12 of their remarks but if so they may contact the examiner to set up a time.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Mullis whose telephone number is (571) 272-1075. The examiner can normally be reached on Monday-Friday from 9:30 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on (571) 272-1078. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-0994.

JCM

7-23-05

Jeffrey Mullis  
Primary Examiner  
Art Unit 1711

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Primary Examiner  
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